



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/172069

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 25, 2016, at Ellsworth, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for occupational therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Pierce County.

2. The petitioner with [REDACTED] requested 26 weekly occupational therapy sessions at a cost of \$2,691 on November 10, 2015. It submitted additional information at the department's request on December 2, 2015. The department denied the request on January 20, 2016.
3. The petitioner is a 12-year-old girl in the sixth grade. [REDACTED] lists her diagnosis as an "unspecified lack of coordination." Her school district indicates that her primary disability is "emotional behavioral disability." It lists her diagnoses as ADHD and oppositional-defiant disorder.
4. The petitioner's tests for grip strength, key pinch, tip pinch, and jaw chuck were 1.4 to 4.95 standard deviations below the norm. While being tested, she "appeared frustrated and fatigued," looking "around for a clock" and asking "when she would be done." [REDACTED] *Pediatric Evaluation*, p.2.
5. The petitioner exhibits no sign of malnutrition or poor nutrition.
6. [REDACTED]'s primary goal for the petitioner is that she "will demonstrate sensory processing, fine motor coordination, and hand strength to increase functional participation in age-appropriate daily tasks." It set the following sub-goals for her:
 - a. As a measure of improved hand strength of the fine motor tasks, [she] will demonstrate a 5% increase in key pinch, tip pinch, and 3-jaw chuck pinch measurements.
 - b. As a measure of improved fine motor skills, [she] will bead 5 small beads onto a string in less than 45 seconds, in 3 of 4 opportunities.
 - c. As a measure of decreased oral motor sensitivity, she will try 3 new fruits, without adverse reactions.
 - d. As a measure of improved hand endurance, [she] will write a 7 sentence paragraph in less than 3 minutes and without showing signs of fatigue, in 3 or 4 opportunities.
7. [REDACTED]'s seeks to treat the petitioner with a combination of neuromuscular reeducation, therapeutic activities, and self-care management training.
8. The petitioner receives special education services through her school district.

DISCUSSION

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Adm. Code, § DHS 107.17(2)(b). When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Adm. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. HFS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;

7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The petitioner's provider, [REDACTED], requested 26 weeks of weekly occupational therapy to treat problems it attributes to an unspecified lack of coordination. It indicates that she has trouble writing and will not eat fruit other than apple sauce. It attributes her poor handwriting to a lack of grip and pincher strength and her limited fruit intake to sensory problems. It seeks to increase pinching strength by 5%, improve her coordination so she can bead five small beads onto a string in less than 45 seconds in three of four opportunities, and decrease her oral motor sensitivity to the point where she will try three new fruits without adverse reactions.

[REDACTED] has not established the need for a therapist for any of its request. Although it lists her various types of grip strength as being up to almost five standard deviations below the norm, these score are questionable because [REDACTED]'s comments indicate that she "appeared frustrated and fatigued," looking "around for a clock" and asking "when she would be done." Her school district's Individualized Education Plan indicates she has severe mental health problems and is diagnosed with oppositional-defiant disorder or ADHD. There is no discussion about whether these problems caused her to stop making an effort during the test. Nor is there is a discussion about how this affects her writing or her ability to take a test demonstrating her ability to write. Even if she has physical fatigue, which could be a sign of poor strength, one would expect her writing to deteriorate as fatigue increased. There is no documentation concerning whether this is true or anything else about her specific problems with penmanship. And a poor grip does cause her poor penmanship, something [REDACTED] has not established, squeezing a rubber ball or some similar contraption should help improve her strength without the need for a therapist.

As for the oral defensiveness [REDACTED] attributes to the petitioner, a balanced diet is no doubt helpful. But children, and sometimes adults, have certain foods that they find inedible. Some people don't like fish. Others despise broccoli. And an aversion to fruit, unfathomable as it is to those who savor fresh oranges and strawberries, is not unheard of among normal, healthy persons. Because this is a medical assistance case, what matters is whether the petitioner's aversion to fruit affects her health. There is no evidence that it does. Therefore, medical assistance funds cannot be used to treat the alleged problem.

CONCLUSIONS OF LAW

The requested occupational therapy is not medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of May, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 9, 2016.

Division of Health Care Access and Accountability